D. M. YATES

IBLA 82-918 Decided January 14, 1983

Appeal from decision of Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offer OR 25327.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant

   An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Bona Fide Purchaser

   Even assuming, arguendo, that apparent omissions on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

3. Administrative Authority: Laches -- Estoppel -- Laches -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing
   The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through

lack of or delay in enforcement by some of its officers.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

D. M. Yates appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 13, 1982, rejecting oil and gas lease offer OR 25327 because offeror failed to sign all five copies of the offer as required by 43 CFR 3111.1-1(a). The case file includes one signed original of the offer form and four unsigned copies.

On appeal appellant contends that the identity of the offeror was clear and the intent obvious; that "each offer" (appellant apparently means the original copy) was, in effect, signed in ink as required by the regulations; that the regulations are ambiguous because they do not require that the offeror must sign all copies; that a bona fide purchaser and a "remote purchaser" both have acquired interests in the offer in good faith, for valuable consideration, and in absence of notice of violation of the regulations; that BLM should be estopped from rejecting the offer because it allowed an excessive and unreasonable period of time to elapse between the initial processing of the offer, the noting of the purported defect and issuance of the decision of rejection.

[1] The appropriate regulation at 43 CFR 3111.1-1(a) reads:

§ 3111.1-1 Public domain.

> (a) Application -- (1) Forms. Except as provided in Subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: Provided, That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or valid reproduction of the official form will also constitute the lease when signed by the Authorizing officer of the Proper Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours. [Last emphasis supplied.]

Although the quoted regulation is not crystal clear, the underscored language of the quoted regulation strongly indicates that any one of the original or four copies thereof, when executed by BLM will constitute the lease. We recognize that the Board has held that regulations should be so

clear that there is no basis for an oil and gas applicant's noncompliance with them. W. W. Priest, 55 IBLA 398 (1981).

> In Mary Adele Monson, 71 I.D. 269, 271 (1964), the Department stated:
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> The Department's regulations provide only that the offer must be signed in ink by the offeror. * In the absence of a specific regulation to the contrary, there is no basis for departing from the generally accepted standard as to what constitutes a signature. * * *
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> It does not necessarily follow, however, that copies of a lease offer in which some copies of the lease form bear one signature and some bear another are acceptable as "copies" under the Department's regulations.
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> Some courts have held that the word "copy" implies that the instrument so labeled is identical with another instrument. In re Janes' Estate, 116 P. 2d 438, 441 (Calif. 1941); Blatz v. Travelers Ins. Co., 68 N.Y.S. 801, 806 (1947). While the Department has not adapted such a rigid interpretation of the word "copy" and has permitted some minor deviations in the copies of oil and gas lease offers and has held that a document may qualify as a copy of a lease offer even though partially illegible (see A. M. Culver, John F. Partridge, Jr., and Duncan Miller, 70 I.D. 484 (1963)), it would seem that a document varying from another in such a substantial matter as the signature cannot be termed a "copy."
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> * In construing that requirement, the Department has held that the regulation does not require that each of the five required copies be individually signed in ink, but it is sufficient if only one copy was directly signed in ink and the signature was impressed on the other four copies through the use of carbon paper. Duncan Miller, Robert A. Priester, A-28621 etc. (May 10, 1961).

See Duncan Miller, 10 IBLA 208 (1973), which held that all five copies of an offer must be signed. 1/ It follows that the four purported "copies," which were unsigned, cannot be deemed to meet the requirement of the regulations. We therefore hold that BLM correctly rejected appellant's offer because appellant failed to sign all five copies. The failure to sign all required copies is not included in the list of curable defects set forth in 43 CFR 3111.1-1(e). Accordingly, the failure to sign is not curable.

[2] Appellant argues that BLM may not reject her offer because a bona fide purchaser and a "remote purchaser" have acquired interests in the offer.

1/ Although Administrative Judge Lewis dissented in this Duncan Miller decision, she feels bound by the holding of the majority.

The bona fide purchaser protection applies only to purchasers of interests in leases and does not affect the Department's authority to reject a defective offer or application. Robert W. Myers, 63 IBLA 100 (1982); Leon M. Flanagan, 25 IBLA 269 (1976); Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974). As we explained in Robert W. Myers, supra, extending the bona fide purchaser protection to purchasers of interests in offers or applications would afford an applicant a period of time to avoid the consequences of an illegal filing simply by selling it without revealing the illegality of the filing to the buyer. This procedure cannot be condoned.

In any event, the fact that the copies were not signed was apparent on the face of these documents. Any reasonable purchaser checking the case file would have had substantial reason to doubt the validity of the offer and could not, therefore, be a bona fide purchaser.

[3] Appellant's estoppel argument is without merit. The Department's authority to protect the public interest by enforcing its oil and gas lease regulations, which it must do (McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955)), is not vitiated by delays in the performance of its duties. 43 CFR 1810.3(a). Robert W. Myers, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN DISSENTING:

Yates signed the original offer on the signature line of the form and initialed each of the four copies of the offer on exhibit A that described the lands requested for lease. Below the initials are a line and "D. M. Yates, O & G Lease Offer," clearly intending a signature and identifying the signatory. Since 43 CFR 3111.1-1(a) does not require that each copy must be signed, I would hold Yates has complied. I do not think Duncan Miller, 10 IBLA 208 (1973), commands otherwise. In that case the offeror failed to sign the fourth copy that had a carbon copy of his name typed on it. The Board held the typewritten name did not constitute a signature "in view of the variation between the signature on the original and three copies on the one hand, and the inscription on the fourth copy on the other." Id. at 211. In this case Yates personally signed the form and initialed all four copies.

If the Bureau wishes each of the copies of the official form signed, it should amend 43 CFR 3111.1-1(a) to specifically require that, rather than expect us to interpret such ambiguous language to achieve that result.

I dissent.

Will A. Irwin
Administrative Judge